IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A NO. 498 OF 2015 (O & M)
DECIDED ON : 03.03.02015

Dharambir

...Appellant

versus

Uttri Haryana Bijli Vitran Nigam Limited and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K.C.PURI

Present : Mr. Akshay Jindal, Advocate.

K. C. PURI, J. (ORAL)

Challenge in this regular second appeal is to the judgment and decree dated 24.12.2014 passed by Dr.Neelima Shangla, District Judge, Panipat, vide which the appeal preferred by the Uttri Haryana Bijli Vitran Nigam Limited (in short "UHBVNL") was accepted by setting aside the judgment dated 08.09.2012 passed by Ms. Anuradha, Civil Judge (Junior Division), Panipat in Civil Suit No. 139 of 2012 titled as, "Dharambir vs. UHBVNL and others".

Brief resume of the case is that Dharambir-plaintiff filed a suit for declaration, mandatory injunction and permanent injunction with the averments that he was running a restaurant under the name and style of Canal View at Virat Nagar, Canal Bye-Pass, in which electricity meter bearing account No. E21-

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1644-w was installed by the defendants. The plaintiff had been paying the electricity bill regularly from time to time. In the year 2008, due to some unavoidable circumstances, the plaintiff had to close his restaurant and as there was very less consumption of electricity in the premises, the defendant started issuing electricity bill on average basis without taking any reading. Thereafter, the plaintiff had made payment of the electricity bill whichever was received. However, the plaintiff requested the defendant to sent the bill on minimum or actual consumption basis but defendant never took reading and continued charging bill on average basis. It was further pleaded that on 09.07.2010, the plaintiff made part payment of the electricity bill but the defendants were adamant to recover the entire outstanding bill from the plaintiff and made false case of theft of electricity against the plaintiff. The defendants calculated all the electronic items in the cheking report which were not in use for the last three years and also removed the meter of the plaintiff. Thereafter, the defendants sent two notices to the plaintiff on 21.07.2010 thereby demanding ₹1,87,996/- as penalty and ₹80,000/- as compounding amount and threatened the plaintiff to deposit the same, otherwise criminal proceedings would be got registered against him. The plaintiff is not liable to pay any amount of penalty. The defendants were issuing average bill due to non-consumption and meter status code is given 's' in every electricity bill, which means the 'meter not at site'.

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The suit was contested by the defendants by filing joint written statement taking preliminary objections of maintainability; locus standi; cause of action; concealment of material facts. It was further submitted that on 09.07.2010, the premises of the plaintiff was checked by the vigilance party of Nigam and the plaintiff was running his electricity supply through bypassing the meter which amounted to theft of electricity. The meter of plaintiff was removed from the site and was handed over to the operation staff. Thereafter, defendant No.2 gave notice vide Memo No. 1707 and 1773 dated 21.07.2010 for ₹1,87,996/- and ₹80,000/- which have not been paid by the plaintiff till date.

On merits, it is admitted that defendant sent the bills to the plaintiff on average basis as the premises of the plaintiff was found locked at the time of checking. The fact of sending notices thereby demanding ₹1,87,996/- and ₹80,000/- as compounding amount has been admitted by the defendants. Rest of the averments have been denied. So, prayer has been made for dismissal of the suit.

No replication was filed. From the pleadings of parties, following issues were framed by the trial Court : -

1) Whether the checking report LL 1 No. 597 dated 09.07.2010 notice memo No. 1760 dated 21.07.2010 memo No. 1773 dated 21.07.2010 are illegal, null and void and not binding upon the rights of the plaintiff ? OPP

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2) Whether the plaintiff is entitled for relief of mandatory injunction, as prayed for ? OPP

3) Whether the plaintiff is entitled for relief of permanent injunction, as prayed for ? OPP

4) whether the suit is not maintainable in the present form ? OPP

5) Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW-1 and tendered documents Ex.P1 to Ex.P5 and closed the evidence.

On the other hand, the defendants examined JE Pale Ram as DW-1, SDO S.K.Goyat as DW-2 and tendered documents Ex.D1 to Ex.D4 and closed the evidence.

No evidence was led in rebuttal by the plaintiff.

The learned trial Court, after appreciating the evidence, returned the findings on Issues No.1 to 3 in favour of the plaintiff and ultimately decreed the suit of plaintiff with costs.

Feeling dissatisfied with the above said judgment and decree dated 08.09.2012 passed by Civil Judge (Junior Division), Panipat, the defendant preferred first appeal. The learned District Judge, Panipat vide judgment dated 24.12.2014, accepted the appeal by reversing the findings on Issues No.1 to 3 and dismissed the suit of plaintiff.

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Feeling aggrieved with the judgment dated 24.12.2014, passed by District Judge, Panipat, the plaintiff has preferred the present regular second appeal.

The appellant in para No.4 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the present appeal :-

1) Whether the assessing officer has the power to make assessment provisional or final under Section 135 of the Act ?

2) Whether only the special court under Section 153/154 of the Act has been power to assess the civil liability in case of offences under Section 135 of the Act ?

3) Whether the only authorized officer has the power to search, inspect, break open the premises in cases of suspected theft as per the mandate of Section 135 (2) of the Act ?

4) Whether the first appellate court is required to give findings on each issue as per the mandate of order 41 of CPC ?

5) Whether it is a case of misreading of evidence ?

6) Whether the judgment of the first appellate court is illegal, perverse and the rights of the appellant have been gravely prejudiced ?

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Learned counsel for the appellant has submitted that Section 135 of the Electricity Act, 2003 (hereinafter referred to as "the Act") deals with the theft of energy. It is further submitted that procedure for dealing with such cases is prescribed under Sections 153 and 154 of the Act. Special courts have been constituted who can determine the civil liability in respect of alleged theft. It is further submitted that the defendants/respondents have resorted to Section 126 of the Act and as such, the order passed by the defendants/respondents is vitiated. It is further submitted that only authorized officer has power to search or inspect the premises in case of suspected theft as per the mandate of Section 135 (2) of the Act and the same has not been complied with. It is further submitted that the first appellate court was required to give findings in accordance with Order 41 of the CPC i.e each and every issue should have been decided separately which has not been done. It is further submitted that the judgment of first appellate court is a result of misreading of the evidence. The said judgment is illegal, perverse and rights of the appellant have been greatly prejudiced.

I have carefully considered the said submissions but do not find any force in the same.

Learned counsel for the appellant could not point out as to which evidence has been misread by the appellate court. From the evidence on file, it cannot be said that there is non-compliance of Sections 135, 153 and 154 of the Act. The bare

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reading of Sections 126, 153 and 154 of the Act reveals that independent procedure has been laid down in these Sections. It is no where mentioned in the Act that in case the proceedings under Section 126 of the Act are resorted in that case no proceedings under Sections 153 and 154 of the Act can be initiated. Admittedly, a case has been registered against the appellant regarding theft of energy. It cannot be said that on the basis of it notice has not been issued by the competent authority. The point for determination in the present case is whether the plaintiff is entitled for injunction in case the theft of energy is found. The answer to that question is in negative.

In support of his contention, learned counsel for the appellant has relied upon authority "***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another vs. Sri Seetaram Rice Mill" 2012 (2) Supreme Court Cases 108.***

So far as authority ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)'s case (supra)*** is concerned, the same relates to Section 126 of the Act relating to unauthorized use of consumption of electricity in excess of sanctioned load. The ratio of said judgment is that the final order is appealable under Section 127 of the Act. It has been further observed that High Court should normally decline to interfere in the final order of assessment passed by the Assessing Officer in terms of Section 126 (3) of the Act. The case was

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remanded back to the Hon'ble Apex Court as the High Court in that case has not answered the question of law relating to lack of jurisdiction. So, the above said authority is not helpful to the case of appellant.

Learned counsel for the appellant has further failed to prove that judgment of the first appellate court is illegal, perverse and against law.

So, in view of the above discussion, all the substantial questions of law raised by the appellant stands answered against the appellant. Consequently, the appeal is without any merit and the same stands dismissed.

MARCH 03, 2015 **(K. C. PURI)**
shalini **JUDGE**

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